

EXHIBIT J

E-filed 5/22/07

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD J. CRANE,
Plaintiff,

vs.

S. HATTON, et al.,
Defendants.

No. C 06-6910 JF (PR)
ORDER OF SERVICE

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against Salinas Valley State Prison employees. Plaintiff has been granted leave to proceed in forma pauperis in a separate written order. The Court reviews Plaintiff's claims pursuant to 28 U.S.C. § 1915A and orders service of the complaint on the named Defendants.

BACKGROUND

Plaintiff alleges that on April 23, 2004, he was classified as "Porter Only Support Services Waiting List" due to his being a victim of assault in the kitchen and his federal lawsuits against CDC kitchen personnel. On October 15, 2005, Plaintiff was mistakenly assigned to the

1 main kitchen at Salinas Valley State Prison ("SVSP"). Plaintiff filed a "602 Appeal" on October
2 19, 2005, and spoke to SVSP Main Kitchen Sergeant Prior, who read Plaintiff's "128 G Chrono"
3 and told Plaintiff that he would write a chrono and had Plaintiff escorted out of the kitchen by
4 Officer Ayala. See Complaint at 5.

5 On November 4, 2005, Plaintiff resubmitted his appeal after it was denied by the SVSP
6 Assignment Sergeant. It was then assigned to Sergeant Prior for first level of review and granted
7 on November 22, 2005. Plaintiff was transferred from SVSP to federal court for trial on
8 November 22, 2005 after midnight. See Complaint at 5.

9 On November 22, 2005, defendant G. Schopf filed a false rules violation report ("RVR")
10 against Plaintiff for refusal to work. On January 26, 2006, defendant S. Hatton denied Plaintiff
11 the right to confront his accuser or call witnesses. Thereafter, Plaintiff was found guilty of the
12 rules violation report. Plaintiff contends that defendants G. Schopf and S. Hatton denied his
13 right to procedural due process in his pending appeal and retaliated against him for pursuing this
14 appeal and because Plaintiff was suing another Correctional Officer. Plaintiff alleges that
15 Defendants denied his substantive due process in filing a false charge of refusal to work. See
16 Complaint at 3, 5.

17 Plaintiff names the following Defendants in his complaint: SVSP Correctional Lieutenant
18 S. Hatton and SVSP Correctional Officer G. Schopf. Plaintiff seeks injunctive relief, a
19 declaratory judgment, compensatory and punitive monetary damages, costs of suit, reasonable
20 attorney's fees, and further relief as the Court deems proper. See Complaint at 2, 3-4.

21 DISCUSSION

22 A. Standard of Review

23 Federal courts must engage in a preliminary screening of cases in which prisoners
24 seek redress from a governmental entity or officer or employee of a governmental entity. 28
25 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any
26 claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or
27 seek monetary relief from a defendant who is immune from such relief. Id. at 1915A(b)(1),(2).
28 Pro se pleadings must, however, be liberally construed. Balistreri v. Pacifica Police Dep't, 901

1 F.2d 696, 699 (9th Cir. 1988).

2 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
3 elements: (1) that a right secured by the Constitution or laws of the United States was violated,
4 and (2) that the alleged deprivation was committed by a person acting under the color of state
5 law. West v. Atkins, 487 U.S. 42, 48 (1988).

6 B. Plaintiff's Claims

7 1. **Due Process**

8 Prisoners retain their right to due process subject to the restrictions imposed by the nature
9 of the penal system. See Wolff v. McDonnell, 418 U.S. 539, 556 (1974). Thus, although prison
10 disciplinary proceedings are not part of a criminal prosecution and the full panoply of rights due
11 a defendant in such proceedings does not apply, the Due Process Clause requires certain
12 minimum procedural protections if (1) State statutes or regulations narrowly restrict the power of
13 prison officials to impose the deprivation, and (2) the liberty in question is one of "real
14 substance." See Sandin v. Conner, 515 U.S. 472, 477-87 (1995); Wolff, 418 U.S. at 556-57,
15 571-72 n.19.

16 California's regulations concerning discipline provide explicit standards that narrowly
17 fetter official discretion. See Cal. Code Regs. tit. 15, § 3320(l) (requiring guilt to be proven by
18 preponderance of evidence standard); § 3320(a) (requiring notice); § 3320(b) (requiring
19 hearing); Walker v. Sumner, 14 F.3d 1415, 1419 (9th Cir. 1994) (finding Nevada regulations,
20 which are similar to California's, create liberty interest). The Court assumes for the purpose of
21 this discussion that the sanctions imposed against Plaintiff were deprivations of liberty of real
22 substance.

23 Wolff established five procedural requirements for prison disciplinary hearings
24 implicating the Due Process Clause. First, "written notice of the charges must be given to the
25 disciplinary-action defendant in order to inform him of the charges and to enable him to marshal
26 the facts and prepare a defense." Wolff, 418 U.S. at 564. Second, "at least a brief period of time
27 after the notice, no less than 24 hours, should be allowed to the inmate to prepare for the
28 appearance before the [disciplinary committee]." Id. Third, "there must be a 'written statement

1 by the factfinders as to the evidence relied on and reasons' for the disciplinary action." Id.
 2 (quoting Morrissey v. Brewer, 408 U.S. 471, 489 (1972)). Fourth, "the inmate facing
 3 disciplinary proceedings should be allowed to call witnesses and present documentary evidence
 4 in his defense when permitting him to do so will not be unduly hazardous to institutional safety
 5 or correctional goals." Id. at 566; see also Bartholomew v. Watson, 665 F.2d 915, 917-18 (9th
 6 Cir. 1982) (right to call witnesses is basic to fair hearing and decisions to preclude should be on
 7 case by case analysis of potential hazards of calling particular person). Fifth, "[w]here an
 8 illiterate inmate is involved . . . or where the complexity of the issues makes it unlikely that the
 9 inmate will be able to collect and present the evidence necessary for an adequate comprehension
 10 of the case, he should be free to seek the aid of a fellow inmate, or . . . to have adequate
 11 substitute aid . . . from the staff or from a[n] . . . inmate designated by the staff." Wolff, 418 U.S.
 12 at 570. The Court specifically held that the Due Process Clause does not require that prisons
 13 allow inmates to cross-examine their accusers, see id. at 567-68, and does not give rise to a right
 14 to counsel in the proceedings, see id. at 569-70.

15 In Superintendent v. Hill, 472 U.S. 445, 454 (1985), the Court held that the minimum
 16 requirements of procedural due process also require that the findings of the prison disciplinary
 17 board be supported by some evidence in the record. Id. at 454. An examination of the entire
 18 record is not required nor is an independent assessment of the credibility of witnesses or
 19 weighing of the evidence. See id. The relevant question is whether there is any evidence in the
 20 record that could support the conclusion reached by the disciplinary board. Id. at 455. The
 21 Ninth Circuit additionally has held that there must be some indicia of reliability of the
 22 information that forms the basis for prison disciplinary actions. See Cato v. Rushen, 824 F.2d
 23 703, 704-05 (9th Cir. 1987).

24 The fact that a prisoner may have been innocent of disciplinary charges brought against
 25 him, however, does not give rise to a constitutional claim. The Constitution demands due
 26 process in prison disciplinary procedures, not error-free decision-making. See Ricker v.
 27 Leapley, 25 F.3d 1406, 1410 (8th Cir. 1994); McCrae v. Hankins, 720 F.2d 863, 868 (5th Cir.
 28 1983).

1 Plaintiff alleges that defendant G. Schopf filed a false rules violation report against him
 2 for refusal to work. Defendant S. Hatton denied Plaintiff the right to confront his accuser or call
 3 witnesses. Thereafter, Plaintiff was found guilty of the rules violation report. Plaintiff contends
 4 that defendants G. Schopf and S. Hatton denied his right to procedural due process in his
 5 pending appeal and retaliated against him for pursuing this appeal and because Plaintiff was
 6 suing another Correctional Officer.

7 Plaintiff's claim that he was denied due process in the failure to confront his accuser at
 8 his prison disciplinary hearing is not cognizable under 42 U.S.C. § 1983. See Wolff, 418 U.S. at
 9 567-68. Liberally construed, Plaintiffs remaining allegations are sufficient to state a cognizable
 10 due process claim. The Court will order service of this claim on the named Defendants.

11 **2. Retaliation**

12 Retaliation by a state actor for the exercise of a constitutional right is actionable under 42
 13 U.S.C. § 1983 even if the act, when taken for different reasons, would have been proper. See
 14 Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274, 283-84 (1977). Retaliation, though it is
 15 not expressly referred to in the Constitution, is actionable because retaliatory actions may tend to
 16 chill individuals' exercise of constitutional rights. See Perry v. Sindermann, 408 U.S. 593, 597
 17 (1972). "Within the prison context, a viable claim of First Amendment retaliation entails five
 18 basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2)
 19 because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's
 20 exercise of his First Amendment rights, and (5) the action did not reasonably advance a
 21 legitimate correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005)
 22 (footnote omitted); accord Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995); Barnett v.
 23 Centoni, 31 F.3d 813, 816 (9th Cir. 1994) (same).

24 A prisoner has no constitutionally guaranteed immunity from being falsely or wrongly
 25 accused of conduct which may result in the deprivation of a protected liberty interest. See
 26 Sprouse v. Babcock, 870 F.2d 450, 452 (8th Cir. 1989); Freeman v. Rideout, 808 F.2d 949, 951
 27 (2d Cir. 1986). As long as a prisoner is afforded procedural due process in the disciplinary
 28 hearing, allegations of a fabricated charge fail to state a claim under § 1983. See Hanrahan v.

1 Lane, 747 F.2d 1137, 1140-41 (7th Cir. 1984). However, if fabricating charges against an
 2 inmate infringes on a substantive constitutional right, e.g. the right of access to the courts, the
 3 mere presence of procedural protections cannot defeat a claim for denial of the substantive
 4 constitutional right. See, e.g., Franco v. Kelly, 854 F.2d 584, 588-90 (2d Cir. 1988) (filing of
 5 false charges against prisoner in retaliation for his cooperation with state investigators
 6 constituted violation of prisoner's substantive constitutional rights). Similarly, a claim that false
 7 disciplinary charges were filed in retaliation for a grievance submitted under established
 8 procedures is actionable under § 1983. See Sprouse, 870 F.2d at 452.

9 Plaintiff claims that defendant G. Schopf filed a false rules violation report against
 10 Plaintiff for refusal to work. On January 26, 3006, defendant S. Hatton denied Plaintiff the right
 11 to confront his accuser or call witnesses. Thereafter, Plaintiff was found guilty of the rules
 12 violation report. Plaintiff contends that defendants G. Schopf and S. Hatton retaliated against
 13 him for pursuing his appeal and because Plaintiff was suing another Correctional Officer.
 14 Plaintiff alleges that Defendants denied his substantive due process in filing a false charge of
 15 refusal to work. Liberally construed, plaintiff's allegations satisfy the pleading requirements for
 16 a First Amendment retaliation claim. The Court will order service of this claim on the named
 17 Defendants.

18 CONCLUSION

19 1. The Clerk shall issue a summons and the United States Marshal shall serve,
 20 without prepayment of fees, copies of the amended complaint in this matter (docket no. 1), all
 21 attachments thereto, and copies of this order on Defendants S. HATTON, Correctional
 22 Lieutenant at Salinas Valley State Prison; and G. SCHOPF, Correctional Officer at Salinas
 23 Valley State Prison. The Clerk shall also serve a copy of this order on Plaintiff.

24 2. In order to expedite the resolution of this case, the Court orders as follows:

25 a. No later than **sixty (60) days** from the date of this order, Defendants shall
 26 file a motion for summary judgment or other dispositive motion, or shall notify the Court that
 27 Defendants are of the opinion that this case cannot be resolved by such a motion. The motion
 28 shall be supported by adequate factual documentation and shall conform in all respects to

1 Federal Rule of Civil Procedure 56.

2 **Defendants are advised that summary judgment cannot be granted, nor qualified**
 3 **immunity found, if material facts are in dispute. If Defendants are of the opinion that this**
 4 **case cannot be resolved by summary judgment, they shall so inform the Court prior to the**
 5 **date the summary judgment motion is due.**

6 All papers filed with the Court shall be promptly served on Plaintiff.

7 b. Plaintiff's opposition to the dispositive motion shall be filed with the
 8 Court and served on Defendants no later than **thirty (30) days** from the date Defendants' motion
 9 is filed. The Ninth Circuit has held that the following notice should be given to plaintiffs:

10 The defendants have made a motion for summary judgment by
 11 which they seek to have your case dismissed. A motion for summary
 12 judgment under Rule 56 of the Federal Rules of Civil Procedure will, if
 13 granted, end your case.

14 Rule 56 tells you what you must do in order to oppose a
 15 motion for summary judgment. Generally, summary judgment
 16 must be granted when there is no genuine issue of material fact--
 17 that is, if there is no real dispute about any fact that would affect
 18 the result of your case, the party who asked for summary judgment
 19 is entitled to judgment as a matter of law, which will end your
 20 case. When a party you are suing makes a motion for summary
 21 judgment that is properly supported by declarations (or other
 22 sworn testimony), you cannot simply rely on what your complaint
 23 says. Instead, you must set out specific facts in declarations,
 24 depositions, answers to interrogatories, or authenticated
 25 documents, as provided in Rule 56(e), that contradict the facts
 26 shown in the defendant's declarations and documents and show
 27 that there is a genuine issue of material fact for trial. If you do not
 28 submit your own evidence in opposition, summary judgment, if
 appropriate, may be entered against you. If summary judgment is
 granted in favor of defendants, your case will be dismissed and
 there will be no trial.

See Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc).

Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure and Celotex
Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) (holding party opposing
 summary judgment must come forward with evidence showing triable issues of material fact on
 every essential element of his claim). Plaintiff is cautioned that failure to file an opposition to
 Defendants' motion for summary judgment may be deemed to be a consent by Plaintiff to the
 granting of the motion, and granting of judgment against plaintiff without a trial. See Ghazali v.

1 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (per curiam); Brydges v. Lewis, 18 F.3d 651, 653 (9th
2 Cir. 1994).

3 Plaintiff is also advised that a motion to dismiss for failure to exhaust administrative
4 remedies under 42 U.S.C. § 1997e(a) will, if granted, end his case, albeit without prejudice.
5 Plaintiff must "develop a record" and present it in his opposition in order to dispute any "factual
6 record" presented by the defendants in their motion to dismiss. Wyatt v. Terhune, 315 F.3d
7 1108, 1120 n.14 (9th Cir. 2003).

8 c. Defendants shall file a reply brief no later than **fifteen (15) days** after
9 Plaintiff's opposition is filed.

10 d. The motion shall be deemed submitted as of the date the reply brief is due.
11 No hearing will be held on the motion unless the Court so orders at a later date.

12 3. All communications by the Plaintiff with the Court must be served on Defendants,
13 or Defendants' counsel once counsel has been designated, by mailing a true copy of the
14 document to Defendants or Defendants' counsel.

15 4. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
16 and the parties informed of any change of address and must comply with the Court's orders in a
17 timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
18 pursuant to Federal Rule of Civil Procedure 41(b).

19 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
20 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is
21 required before the parties may conduct discovery.

22 IT IS SO ORDERED.

23 DATED: 5/22/07


JEREMY FOGEL
United States District Judge

STATE OF CALIFORNIA
COUNTY OF MONTEREY

(C.C.P. SEC. 466 & 2015.5; 28 U.S.C. SEC. 1746)

I, Richard J. Crane declare under penalty of perjury that: I am the Plaintiff in the above entitled action; I have read the foregoing documents and know the contents thereof and the same is true of my own knowledge, except as to matters stated therein upon information, and belief, and as to those matters, I believe they are true.

Executed this 16th day of June, 20 08, at Salinas Valley State Prison, Soledad, California 93960-1050.

(Signature) Richard J. Crane
DECLARANT/PRISONER

PROOF OF SERVICE BY MAIL
(C.C.P. SEC 1013(a) & 2015.5; 28 U.S.C. SEC. 1746)

I, Richard J. Crane, am a resident of California State Prison, in the County of Monterey, State of California; I am over the age of eighteen (18) years and am ~~am not~~ a party of the above entitled action. My state prison address is: P.O. Box 1050, Soledad, California 93960-1050.

On June 16, 20 08, I served the foregoing: FIRST AMENDED COMPLAINT UNDER THE CIVIL RIGHTS ACT, Title 42, U.S.C. sec. 1983

(Set forth exact title of document(s) served)

On the party(s) herein by placing a true copy(s) thereof, enclosed in sealed envelope(s), with postage thereof fully paid, in the United States Mail, in a deposit box so provided at Salinas Valley State Prison, Soledad, California 93960-1050.

DANIELLE F. O'BANNON, Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004

(List parties served)

There is delivery service by United States Mail at the place so addressed, and/or there is regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

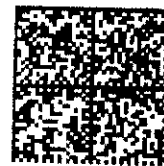
DATED: June 16, 20 08,

Richard J. Crane
DECLARANT/PRISONER

Salinas Valley State Prison
P.O. BOX 1050
Soledad, CA 93960-1050

STATE PRISON
GENERAL INVESTIGATION
DIVISION

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DISTRICT OF CALIFORNIA
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